

立法會 *Legislative Council*

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Bills Committee on Dutiable Commodities (Amendment) Bill 2011

Background brief

Purpose

This paper provides background information on the Dutiable Commodities (Amendment) Bill 2011 (the Bill). It also summarizes the concerns raised by the Subcommittee on Public Revenue Protection (Dutiable Commodities) Order 2011 (the Subcommittee) during the scrutiny of the Public Revenue Protection (Dutiable Commodities) Order 2011 (the Order).

Background

2. According to the Administration, tobacco dependence is a chronic disease that is responsible for causing over 6 900 deaths a year in Hong Kong and 5 400 000 deaths a year worldwide. It is also the single most important preventable risk factor responsible for main causes of death and chronic diseases, including cancers and cardiovascular diseases. The harmfulness of smoking including exposure to second-hand smoke is well-established by scientific research and well-recognized by the community both locally and internationally. The Framework Convention on Tobacco Control (FCTC) of the World Health Organization (WHO) represents the international efforts to address tobacco dependence as a public health epidemic. China is a signatory of and has ratified FCTC, the application of which has been extended to Hong Kong since 2006. The Government's current policy on tobacco control has full regard to the provisions of FCTC.

3. To protect public health, it is the established policy of the Government to discourage smoking, to contain the proliferation of tobacco use and to

protect the public from second-hand smoke as far as possible, with a view to achieving a long term target for Hong Kong to become a smoke-free city. To achieve this, the Administration adopts a step-by-step and multi-pronged approach comprising legislation, taxation, publicity, education, enforcement, smoking cessation, and increasing tobacco duty progressively, with a view to reducing tobacco consumption and smoking prevalence as well as to prevent the youngsters from picking up smoking.

4. Further to the enactment of the Smoking (Public Health) (Amendment) Ordinance 2006 and the implementation of the smoking ban on 1 January 2007, the Administration has taken a series of measures in a progressive manner to strengthen tobacco control. These measures included –

- (a) effecting new graphic warning and packaging restrictions on tobacco products in October 2007;
- (b) prohibiting the display of tobacco advertisements at retail dealers with two employees or less from 1 November 2007;
- (c) commencing a three-year pilot programme of community-based smoking cessation services based on evidence-based service model in collaboration with a non-government organization in January 2009;
- (d) raising the duty for tobacco products by 50% from 25 February 2009;
- (e) extending smoking ban to the six types of qualified establishment namely bars, clubs, nightclubs, bathhouses, massage establishments, and mahjong and tinkau parlours hitherto exempted from the ban from 1 July 2009;
- (f) implementing the fixed penalty system for smoking offences in accordance with the Fixed Penalty (Smoking Offences) Ordinance (Cap. 600) from 1 September 2009;
- (g) extending smoking ban to the first phase of 48 covered public transport interchanges (PTIs) and bus terminus with superstructures from 1 September 2009;
- (h) effecting the prohibition of tobacco advertisement display at licensed hawker stalls from 1 November 2009;

- (i) commencing a one-year pilot programme of smoking cessation services using acupuncture in collaboration with a non-government organization in April 2010;
- (j) abolishing the duty-free concessions on tobacco products for incoming passengers (except for small quantity for self-consumption) at border entries from 1 August 2010; and
- (k) extending smoking ban to some 130 open-air PTIs from 1 December 2010.

5. According to the Administration, WHO has made clear that increasing tobacco duties is an effective means of tobacco control. To further protect public health from the harmful effects of tobacco, the Financial Secretary has, in his 2011-2012 Budget, proposed to increase the duty on cigarettes by \$0.5 per stick (by 41.5%). Duties on other tobacco products will also be increased by the same percentage.

The Order

6. In order to give immediate effect to increase the duty rates on tobacco, the Chief Executive (CE), after consultation with the Executive Council, made the Order under section 2 of the Public Revenue Protection Ordinance (Cap. 120) (PRPO) on 23 February 2011. The Order came into force at 11 am on 23 February 2011.

7. Section 2 of PRPO provides, among other things, that if the CE approves of the introduction into the Legislative Council (LegCo) of a bill whereby, if the bill were to become law any duty, tax, fee, rate, etc., would be imposed, removed or altered, the CE may make an order giving full force and effect of law to all the provisions of the bill. The Order is made to give full force and effect to all the provisions of the bill contained in the Schedule to the Order.

8. The Order is a temporary measure. Under section 5(2) of PRPO, the Order shall come into force immediately upon signing by the CE and shall expire and cease to be in force –

- (a) upon the notification in the Gazette of the rejection by LegCo of the bill in respect of which the Order was made; or

- (b) upon the notification in the Gazette of the withdrawal of the bill or the Order; or
- (c) upon the bill, with or without modification, becoming law in the ordinary manner; or
- (d) upon the expiration of four months from the day on which the Order came into force,

whichever event first happens.

9. Under section 6 of PRPO, any duty paid under the Order in excess of the respective duty immediately after the expiration of the Order shall be repaid to the person who paid the same.

10. A subcommittee was formed on 24 March 2011 to study the Order and a report on its deliberation has been provided to the House Committee (LC Paper No. CB(1)1883/10-11) at its meeting on 15 April 2011.

11. The scrutiny period of the Order has been extended to 4 May 2011.

The Bill

12. The Bill was introduced into LegCo on 13 April 2011. A Legislative Council Brief [File Ref: FH CR1/4041/05] on the Bill was issued to all Members on 6 April 2011.

13. The Bill seeks to -

- (a) amend Part II of Schedule 1 to the Dutiable Commodities Ordinance to increase the rates of duty on various types of tobacco by about 41.5%; and
- (b) bring the Bill into operation with retrospective effect from 11 a.m. on 23 February 2011 as the Order took effect from that time.

A summary of the proposed rates of duty on various types of tobacco is given in **Appendix**.

Deliberations of the Subcommittee

14. The Subcommittee formed to study the Order has held three meetings with the Administration and received views from the public on the Order at one of these meetings.

15. During the Subcommittee's deliberations, some members queried the justifications for tobacco duty increase and criticized the Administration for failing to seriously examine the social and economic impacts before introducing the duty increase. Members in general expressed concern about the adequacy of the current smoking cessation services and urged the Administration to deploy sufficient manpower and resources to enhance these services.

16. Some members of the Subcommittee considered that the duty increase would only prompt smokers to switch to consuming smuggled cigarettes, making cigarettes smuggling more rampant. Some members also expressed grave concern about the impact of the proposed duty increase on the livelihood of newspaper hawkers and urged the Administration to formulate new measures to safeguard the business of these hawkers. Hon Vincent FANG and Hon Albert CHAN have given notices to move a motion to repeal the Order at the Council meeting on 4 May 2011.

Relevant papers

A list of relevant papers on the Subcommittee is available on the LegCo website at

http://www.legco.gov.hk/yr10-11/english/hc/sub_leg/sc10/general/sc10.htm

Council Business Division 1
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Proposed rates of duty on various types of tobacco

Tobacco Products	Existing rates (\$)	Proposed rates (\$)
(a) for each 1 000 cigarettes	1,206	1,706
(b) cigars	1,553/kg	2,197/kg
(c) Chinese prepared tobacco	296/kg	419/kg
(d) all other manufactured tobacco except tobacco intended for the manufacture of cigarettes	1,461/kg	2,067/kg